

First Judicial District of Pennsylvania

170401646

Robert Holton V. City Of Philadelphia Dept Of Licenses

*Motion Volume 1
April 12, 2017*



*First Judicial District of Pennsylvania
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[1] IN THE COURT OF COMMON PLEAS
 [2] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
 [3] CIVIL TRIAL DIVISION
 [4] ---
 [5] ROBERT HOLTON :
 [6] :
 [7] vs. :
 [8] :
 [9] CITY OF PHILADELPHIA :
 [10] DEPARTMENT OF LICENSES and :
 [11] INSPECTIONS OPERATIONS :
 [12] DIVISION, EAST DISTRICT :
 [13] and :
 [14] CITY OF PHILADELPHIA :
 [15] DEPARTMENT OF LICENSES and :
 [16] INSPECTIONS : NO. 170401646
 [17] ---
 [18] MOTIONS HEARING
 [19] ---
 [20] April 12, 2017
 [21] Room 426, City Hall
 [22] Philadelphia, Pennsylvania
 [23] ---
 [24] **BEFORE:** HONORABLE ABBE F. FLETMAN, J.
 [25] ---
 [26] **Reported By:** Julie Davis, RPR
 [27] Official Court Reporter

[1] **APPEARANCES:**
 [2] JACK M. BERNARD, ESQUIRE
 [3] Attorney for Petitioner
 [4] EDWARD P. JEFFERSON, ESQUIRE
 [5] BEVERLY PENN, ESQUIRE
 [6] Attorneys for Respondent
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 [22]
 [23]
 [24]
 [25]

[1] INDEX
 [2] RESPONDENT'S EVIDENCE
 [3] WITNESS DR CR RDR RCR
 [4] DARIN GATTI
 [5] By Mr. Jefferson 34
 [6] By Mr. Bernard 38
 [7] JAMES TITUS
 [8] By Mr. Jefferson 40
 [9] By Mr. Bernard 63
 [10] SILVIO DI GUGLIELMO
 [11] By Mr. Jefferson 71
 [12] By Mr. Bernard 74
 [13]
 [14]
 [15]
 [16]
 [17]
 [18]
 [19]
 [20]
 [21]
 [22]
 [23]
 [24]
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[1] ---
 [2] (Whereupon, court was duly convened.)
 [3] ---
 [4] **THE LAW CLERK:** Good afternoon, Your
 [5] Honor.
 [6] **THE COURT:** Good afternoon, everyone.
 [7] **THE COURT REPORTER:** Counsel, can you
 [8] please state your names for the record?
 [9] **MR. BERNARD:** Yes.
 [10] My name is Jack Bernard. I'm an
 [11] attorney, and I represent the plaintiff, Robert
 [12] Holton.
 [13] **MR. JEFFERSON:** Good afternoon, Your
 [14] Honor. Edward Jefferson on behalf of the City
 [15] of Philadelphia.
 [16] **MS. PENN:** Good afternoon, Your Honor.
 [17] Beverly Penn on behalf of the City of
 [18] Philadelphia.
 [19] **THE COURT:** Good afternoon.
 [20] Just give me a moment, please, to sign
 [21] on.
 [22] This is our Case No. 1704001646.
 [23] **MS. PENN:** Correct.
 [24] **THE COURT:** All right.
 [25] Mr. Bernard, you want me to enjoin the

Page 5

[1] City from enforcing its Cease Operations Order.
[2] **MR. BERNARD:** That is correct, Your
[3] Honor.
[4] **THE COURT:** Okay.
[5] **MR. BERNARD:** May I speak?
[6] **THE COURT:** Yes, please.
[7] In this courtroom it's better to sit
[8] and move the microphone.
[9] **MR. BERNARD:** Understood.
[10] **THE COURT:** Otherwise, especially with
[11] the rumbling subway cars, it's hard to hear.
[12] Go ahead.
[13] **MR. BERNARD:** How's this?
[14] **THE COURT:** It's better if the mike is
[15] closer to your mouth, actually.
[16] **MR. BERNARD:** Your Honor, we're here
[17] solely and exclusively to maintain the status
[18] quo while my client is appealing to the Board
[19] of License and Inspection Review. In that
[20] matter he's represented by my colleague, Craig
[21] Sopin. Mr. Sopin is prepared to testify if
[22] Your Honor will permit him to testify by
[23] telephone.
[24] **THE COURT:** What would he be testifying
[25] about?

Page 7

[1] **THE COURT:** Well, let me ask.
[2] Is it contested that a stay was
[3] requested before the L&I Board?
[4] **MR. JEFFERSON:** Your Honor, I don't
[5] have reason to disbelieve what counsel is
[6] saying, although I have no independent
[7] knowledge that he has asked for a stay. And I
[8] have no independent knowledge if he had asked
[9] for the stay, that he was refused a stay by the
[10] Board.
[11] **THE COURT:** Wouldn't there be like a
[12] record, a docket; something that shows that it
[13] happened?
[14] **MR. JEFFERSON:** I feel really awkward
[15] sitting down addressing the Court, but I'll try
[16] to do that.
[17] **THE COURT:** I don't care for it either,
[18] but I'd rather hear you than see you.
[19] **MR. JEFFERSON:** Okay. I'm going to try
[20] to like focus on the fact that I'm sitting and
[21] I'm talking to the Court.
[22] **THE COURT:** It's even better if you
[23] move the microphone close to you.
[24] Trust me, when I was a lawyer, I always
[25] wanted to stand. I'm just telling you, the

Page 6

[1] **MR. BERNARD:** That he applied for a
[2] stay before the Board of License and Inspection
[3] Review. And they said, "You're in the wrong
[4] place," pointing to City Hall, "You have to go
[5] across the street."
[6] **THE COURT:** So a stay was applied for
[7] before the L&I Board.
[8] **MR. BERNARD:** That is correct, Your
[9] Honor.
[10] **THE COURT:** Well, why isn't he here?
[11] Why does he have to testify by telephone?
[12] **MR. BERNARD:** Well, that's my fault,
[13] Your Honor. I did not anticipate exactly how
[14] things would play out today. He's in his
[15] office.
[16] **THE COURT:** Which is where?
[17] **MR. BERNARD:** In the Curtis Building.
[18] **THE COURT:** Well, tell him if he wants
[19] to testify, he should come on up.
[20] **MR. BERNARD:** Okay.
[21] **THE COURT:** But, I mean, if he filed
[22] for a stay, isn't there some documentary
[23] evidence of having done that?
[24] **MR. BERNARD:** Well, I don't think
[25] that's contested.

Page 8

[1] acoustics in this courtroom are such that I
[2] really cannot hear you. And, even more
[3] importantly, Julie can't hear you if you don't
[4] speak into the mike.
[5] **MR. JEFFERSON:** I appreciate it.
[6] Thank you, Your Honor.
[7] In response to your question, I've
[8] never seen myself a document that was generated
[9] by the department with respect to a refusal for
[10] a person that made an application for a stay.
[11] So I don't know.
[12] **THE COURT:** Well, here's the question:
[13] Do I need to call this witness down to testify
[14] that he -- are you arguing that Mr. Bernard
[15] failed to exhaust the administrative remedies
[16] by seeking a stay before the L&I Board before
[17] coming here?
[18] **MR. JEFFERSON:** That would be the first
[19] argument.
[20] **THE COURT:** Okay.
[21] Well, then I guess we've got to -- I
[22] mean, if you're not conceding that it happened,
[23] then we're going to need to bring him in to
[24] testify to it.
[25] **MR. JEFFERSON:** And I hate to do that,

Page 9

[1] but I don't -- it's like every other kind of
[2] evidence. I mean, honestly, we expected
[3] Mr. Holton, who is the person who brought the
[4] lawsuit, to be here.

[5] **THE COURT:** Well, we haven't even
[6] gotten that far.

[7] **MR. JEFFERSON:** I know, but...

[8] **THE COURT:** I mean, Mr. Bernard, who is
[9] an officer of the court, has told us that this
[10] has happened. It's already 4:13. I get in
[11] trouble when I keep people after 5:00. So just
[12] make a decision.

[13] Do you want him to bring him in or not?

[14] **MR. JEFFERSON:** Well, as an officer of
[15] the court, I will accept his representation
[16] that Mr. Sopin, who is also a lawyer, you know,
[17] went to the Board of License and Inspection
[18] Review and asked -- I don't know if he asked
[19] appropriately for a stay, an application for a
[20] hearing. I don't know what he did.

[21] **THE COURT:** Well, Mr. Bernard, was this
[22] oral or was this done in writing?

[23] **MR. BERNARD:** Your Honor, Mr. Sopin
[24] took all steps necessary to obtain the stay
[25] before the Board of License and Inspection

Page 11

[1] an injunction?

[2] **MR. BERNARD:** Well, he's not being
[3] called for that purpose.

[4] **THE COURT:** Well, how do you prove your
[5] case without any witnesses? Did I miss the
[6] declarations with the papers?

[7] **MR. BERNARD:** Everything is in our
[8] Complaint, Your Honor.

[9] And, Your Honor, I again say that all
[10] we're asking for now is to maintain the status
[11] quo.

[12] **THE COURT:** But it's the status quo
[13] ante when it's an injunction. And you have to
[14] prove the elements to obtain an injunction.

[15] **MR. BERNARD:** Okay.

[16] **THE COURT:** So, I mean --

[17] **MR. BERNARD:** Then I'm going to have to
[18] ask for leave to adjourn this hearing and -- I
[19] did not understand that that was going to be
[20] the procedure. I likened this procedure today
[21] to a TRO. As a matter of fact, we were told
[22] that we needed a TRO.

[23] **THE COURT:** Well, first of all, there's
[24] nothing even called a TRO in Pennsylvania
[25] practice. There's something called a special

Page 10

[1] Review.

[2] **THE COURT:** So was it in writing or was
[3] it oral?

[4] **MR. BERNARD:** I'm assuming it was in
[5] writing.

[6] **THE COURT:** So you don't know. Your
[7] answer to the question is, you don't know.

[8] **MR. BERNARD:** Well, I don't know the
[9] mechanism that's used by the Board. Very often
[10] the administrative agency itself is being asked
[11] not only to review the order below, if I can
[12] use that expression, but also to stay
[13] enforcement of the order below until it, you
[14] know, exercises its power of review. In other
[15] words, they're being asked to do both things.

[16] **THE COURT:** Well, other than Mr. Sopin,
[17] what evidence do you want to present to the
[18] Court this afternoon?

[19] **MR. BERNARD:** I only have Mr. Sopin's
[20] testimony, Your Honor. And if I have to bring
[21] him down --

[22] **THE COURT:** Well, how does Mr. Sopin
[23] get you likely a success on the merits and
[24] irreparable harm and balancing of the harm and
[25] all of those elements you need to prove to get

Page 12

[1] injunction. But that's typically done in
[2] matters of, you know, life and -- you know,
[3] life and health and those kind of things when
[4] the other side isn't able to get here. But
[5] they're here, so...

[6] **MR. BERNARD:** And I agree with you.
[7] Under Rule 1531, there is only a preliminary
[8] injunction.

[9] **THE COURT:** Well, there's something
[10] called a special injunction.

[11] **MR. BERNARD:** Right. But I don't think
[12] that's --

[13] **THE COURT:** I don't think that's
[14] relevant here.

[15] **MR. BERNARD:** But it has been, as far
[16] as I know, a practice to call it a TRO when
[17] you're seeking provisional relief pending a
[18] hearing on the merits. And that's what we're
[19] seeking today, to maintain the status quo.

[20] **THE COURT:** But what's the basis of
[21] that? You still need to satisfy the elements
[22] to get an injunction.

[23] **MR. BERNARD:** No, Your Honor. We're
[24] simply asking to preserve the status quo
[25] pending a formal plenary hearing on injunctive

[1] relief. That's what we're asking for today.
[2] **THE COURT:** But you don't even have --
[3] I mean, what's the irreparable harm?

[4] **MR. BERNARD:** We're not asking the
[5] Court to determine that there's been
[6] irreparable harm. We're only asking the Court
[7] to preserve the status quo. I think that's a
[8] legitimate application, Your Honor.

[9] In other words, if you're seeking a
[10] preliminary injunction, which is what is
[11] involved in most cases, it may evolve to a
[12] permanent injunction. But if you're seeking a
[13] preliminary injunction, the first thing you
[14] want to do is maintain the status quo;
[15] otherwise, then everything becomes moot.

[16] **THE COURT:** But, Mr. Bernard, there's
[17] standards for obtaining -- well, basically what
[18] you're asking for now is a stay. And there's
[19] standards for obtaining a stay. They're the
[20] same standards as obtaining an injunction. I
[21] mean, cite me a case or a rule if I'm wrong.
[22] It wouldn't be the first time. But that's my
[23] understanding of the law.

[24] **MR. BERNARD:** A stay of enforcement of
[25] an order from an administrative agency --

[1] But, you know, on the basis of this,
[2] the only thing I will say with respect to a
[3] stay of enforcement is that ordinarily when
[4] someone appeals -- and I have the code
[5] sections. It's in the Administrative Code, not
[6] the Health Code. It would be -- I can point
[7] Your Honor to it.

[8] **THE COURT:** Yes.

[9] **MR. JEFFERSON:** The Administrative Code
[10] would be Title 4 -- the Administrative Code is
[11] a subcode. So it would be the Administrative
[12] Code of the Philadelphia Code, Section A-805.
[13] And what that says is --

[14] **THE COURT:** Wait a second.

[15] The Administrative Code of the
[16] Philadelphia Code, Section --

[17] **MR. JEFFERSON:** A-805.

[18] And ordinarily there is a stay. But
[19] that section will tell you that where there's
[20] been a certification that this location, you
[21] know, presents either a public nuisance or a
[22] detrimental and adverse -- immediate adverse
[23] effect on the health, welfare or safety of the
[24] public, you don't get an automatic stay.

[25] That's what counsel was talking about.

[1] **THE COURT:** I mean, if there was no
[2] showing necessary other than you showing up and
[3] saying I want a stay, then there would be a
[4] stay in each and every case.

[5] **MR. BERNARD:** Well, there are
[6] provisions in the Philadelphia Code that
[7] specifically state that when there is an
[8] appeal, you're entitled to a stay.

[9] **THE COURT:** What provisions in
[10] particular?

[11] **MR. BERNARD:** The Health Code, Title 6.
[12] I think it's Section 604, if I'm not mistaken.

[13] **THE COURT:** So Title 6, Section 604 of
[14] the Health Code, the Philadelphia Health Code?

[15] **MR. BERNARD:** That's correct.
[16] Counsel has the code there.

[17] **THE COURT:** All right.

[18] Mr. Jefferson, do you have anything to
[19] add?

[20] **MR. JEFFERSON:** No, Your Honor.

[21] In the absence of any proof -- I mean,
[22] I have witnesses here to -- you know, to
[23] oppose, you know, evidence that would be put on
[24] to show that somehow -- to justify their
[25] request for relief.

[1] As a matter of fact, on the phone today I told
[2] him about that.

[3] **THE COURT:** What's the huge danger if
[4] there's no --

[5] **MR. JEFFERSON:** Well, the huge danger
[6] is -- and this is why we have the chief
[7] surveyor for the City of Philadelphia here.
[8] The huge danger is, what's taking place at that
[9] location, it's done within the Frankford Creek
[10] right of way. And right now they're
[11] contaminating the water. Every time it rains,
[12] whatever it is that's coming from this
[13] scrapyard is going into the Frankford Creek.
[14] And ultimately it's becoming a part of the
[15] water that we drink because that's the water
[16] that gets recycled for the City of Philadelphia
[17] to consume.

[18] So it is an emergency inasmuch as --
[19] you know, the more this activity continues, the
[20] greater likelihood it is for people to actually
[21] be harmed. And I would argue that it's also a
[22] public nuisance by virtue of the fact of the --
[23] you know, the mere fact that he's interfering
[24] with the right of the public, you know, to have
[25] like clean water in the Delaware River.

Page 17

[1] **THE COURT:** So I'm looking at the
[2] section you sent me to --
[3] **MR. JEFFERSON:** Yes, Your Honor.
[4] **THE COURT:** -- "Action Pending Appeal."
[5] **MR. JEFFERSON:** Yes.
[6] **THE COURT:** "A-805.1 Stay of action:
[7] Whenever an appeal filed pursuant to Sections
[8] A-801 or 803 is pending, compliance with the
[9] decision, notice of violation, order, or
[10] license suspension or revocation which is the
[11] subject of appeal shall not be required except
[12] as provided in Section A-805.2."
[13] 805.2 says: "An appeal shall not
[14] constitute a stay of proceedings where either
[15] department finds and certifies in writing that
[16] the violation is intentional or that there
[17] exists a condition of immediate danger or
[18] hazard to health, safety or welfare which
[19] requires immediate compliance. An appeal shall
[20] not constitute grounds for lifting a Stop Work
[21] Order or Cease Operations Order."
[22] **MR. JEFFERSON:** Exactly.
[23] **THE COURT:** So what we have here is a
[24] Cease Operations Order.
[25] **MR. JEFFERSON:** Yes, Your Honor.

Page 19

[1] So, you know, I don't think this is the
[2] context in which that sort of issue should be
[3] litigated and maybe we need a plenary hearing
[4] on that issue.
[5] **THE COURT:** Well, the only thing that's
[6] before me now is your request for a stay.
[7] **MR. BERNARD:** To which we're entitled.
[8] **THE COURT:** I have to tell you, I'm
[9] inclined to agree that it would be your burden
[10] to show the Court that 805.2 is satisfied.
[11] **MR. JEFFERSON:** Your Honor, I've never
[12] heard that before. The reason I say that is,
[13] there's some showing on the part of counsel
[14] that he would have to bring forth to the Court,
[15] in terms of evidence, the showing that would
[16] show that there would be irreparable harm.
[17] **THE COURT:** But there's nothing in the
[18] record that -- you know, that there's this
[19] certification that there exists this horrible
[20] condition.
[21] **MR. JEFFERSON:** It is in the record.
[22] As a matter of fact, it's in the pleading that
[23] counsel actually filed.
[24] **THE COURT:** All right. Let me see.
[25] **MR. BERNARD:** I didn't file anything

Page 18

[1] **THE COURT:** All right.
[2] Mr. Bernard, how do you get around
[3] that?
[4] **MR. BERNARD:** Well, I think the burden
[5] shifts to the City under these circumstances to
[6] show that we're not entitled to a stay.
[7] Presumably, according to what has just
[8] been read to the Court and which the Court read
[9] back, there is a presumptive right to a stay
[10] absent the evidence that's cited in that rule.
[11] And the same, by the way, is true in the Health
[12] Code. It's almost the exact same language. So
[13] I think the burden shifts to the City to show
[14] that.
[15] But one other thing, Your Honor, that I
[16] have to mention. We've discussed this. It
[17] goes back a few years, actually. There's a
[18] property issue here. The contention by the
[19] City -- and I think counsel will admit this --
[20] is that my client is encroaching on City
[21] property, if not trespassing on City property.
[22] That's what this is all about. I'm told if my
[23] client will move his operation back from the
[24] area in question, that the violations will go
[25] away, quote/unquote.

Page 20

[1] that represented that. I filed a list of
[2] violations.
[3] **THE COURT:** Mr. Jefferson, what are you
[4] referring to?
[5] **MR. JEFFERSON:** I'm referring to
[6] Exhibit A, which is the Notice of Intent to
[7] Cease Operations and Order.
[8] **THE COURT:** Okay. Give me a second
[9] here.
[10] (Brief pause.)
[11] **THE COURT:** I mean, you know, it's up
[12] to you. But it seems to me that I have a
[13] statutory standard here that tells me when I
[14] have to issue a stay and when I don't. So if
[15] you don't want to demonstrate to me that the
[16] department found and certified in writing that
[17] there exists a condition of immediate danger to
[18] health, that's fine.
[19] **MR. JEFFERSON:** I'll be happy to do
[20] that.
[21] However, I'd also like to direct your
[22] attention to Exhibit B. Exhibit B is the
[23] certification from which counsel will try to
[24] get relief from this Court.
[25] **MR. BERNARD:** Exhibit B, Your Honor, is

Page 21

[1] a list of violations which we --
[2] **THE COURT:** Mr. Bernard, I have to read
[3] it. Okay? And we're not going to do, you
[4] know, tennis in this courtroom. You presented
[5] what you had to say. Now I'm hearing what the
[6] City has to say. I will come back to you.
[7] **MR. BERNARD:** Very well.
[8] **THE COURT:** I mean, again,
[9] Mr. Jefferson, it's up to you, if you want
[10] to -- if this is what you want to rest on.
[11] **MR. JEFFERSON:** No.
[12] And just for purposes of the record,
[13] Your Honor, with respect to the certification
[14] to which I've just referred Your Honor as
[15] Exhibit B, you'll see that it has the
[16] inspection of March the 2nd. It says: "Notice
[17] of Violation, Building, Construction,
[18] Occupancy, Administrative Code, Zoning and Use
[19] Registration permits." And then it says under
[20] **that:** "Cease Operations Order pursuant to
[21] Title 14, the Zoning and Planning Code." That
[22] was Title 14, Section 306-E.
[23] Now, if I were to direct your attention
[24] to --
[25] **THE COURT:** I actually don't see where

Page 23

[1] of L&I?
[2] **MR. JEFFERSON:** No, I'm not saying that
[3] at all.
[4] **THE COURT:** Okay.
[5] **MR. JEFFERSON:** What I'm saying, Your
[6] Honor, is that there's two different code
[7] sections at play in this case. One is the
[8] Property Maintenance Code. Specifically, the
[9] Administrative Code, the Fire Code. They're
[10] all parts of Title 4, which is -- Title 4 is
[11] one of the reasons for the cease operations.
[12] The other reason for the cease
[13] operations applies under not Title 4 but under
[14] Title 14. Title 14 is the Zoning and Planning
[15] Code. And under Title 14 there is no stay. I
[16] mean, there is no -- I mean, you get no stay
[17] for a cease that's brought under Title 14,
[18] which would mean if somebody needed to get a
[19] stay, they would not go to the Board of License
[20] and Inspection Review. They would come to
[21] court and try to get --
[22] **THE COURT:** Didn't you just tell me
[23] five minutes ago that he was wrong to --
[24] **MR. JEFFERSON:** What I told Your Honor
[25] was with respect to -- we did a certification.

Page 22

[1] you are.
[2] You're in Exhibit B?
[3] **MR. JEFFERSON:** I'm sorry. Forgive me.
[4] Yes, it's Exhibit B.
[5] **THE COURT:** Okay.
[6] **MR. JEFFERSON:** And then it has
[7] inspection, March 2nd. That line that says,
[8] "subject premises."
[9] **THE COURT:** "Upon inspection of the
[10] subject premises."
[11] Is that the one you're directing me to?
[12] **MR. JEFFERSON:** No. It's right above
[13] that. It's right above that.
[14] **THE COURT:** Now I see it.
[15] **MR. JEFFERSON:** So with respect to
[16] Title 14, whenever there's a Cease Operations
[17] pursuant to Title 14 there is no stay, there is
[18] no automatic stay.
[19] And I can refer Your Honor to the
[20] section of Title 14 of the Zoning Code, which
[21] would show that, you know, we can enforce a
[22] cease operations and there's no provision for a
[23] stay.
[24] **THE COURT:** So you're saying the court
[25] has no power to stay a Cease Operations Order

Page 24

[1] I pointed Your Honor to this certification.
[2] Under this certification there are two
[3] different code sections at play. And it's set
[4] out very specifically here. One says: Notice
[5] of Violation, case number, Title 4. If Your
[6] Honor wants to follow along with me, it
[7] **says:** Title 4, Building, Construction,
[8] Occupancy Code, Administrative Code, Zoning and
[9] Use Registration permits. It says: Cease
[10] Operations Order pursuant to Title 14, Zoning
[11] and Planning Code.
[12] Title 14 is a technical code. Title 4
[13] is not a technical code. So whenever there's
[14] any action with respect to a technical code,
[15] such as what this cease represents here, we
[16] don't even have to do a certification. We did
[17] the certification on the basis of the other
[18] violations that were cited under Title 4, which
[19] is the nontechnical part of the code.
[20] And that's also set out -- getting Your
[21] Honor back to the A-800 series, where you had
[22] just read about the compliance under A-805,
[23] which is where I directed Your Honor.
[24] **THE COURT:** Okay.
[25] **MR. JEFFERSON:** Under Chapter 8 of the

[1] Administrative Code it talks about appeals and
[2] it talks about technical and nontechnical
[3] appeals. And this technical appeal would
[4] actually go before the Zoning Board, this
[5] aspect of this appeal. There's two different
[6] things here.

[7] **THE COURT:** I understand. There's
[8] zoning and L&I. I get that.

[9] **MR. JEFFERSON:** Exactly.

[10] So with respect to a cease operations
[11] that would invoke an appeal to the Zoning
[12] Board, there's no automatic stay. We don't
[13] have to certify anything. The cease happens
[14] unless someone comes into court with proof that
[15] somehow -- you know, if the Court were to find
[16] that they could satisfy the elements, the six
[17] requirements under the section for a
[18] preliminary injunction to Your Honor's
[19] satisfaction, you know, they would have a right
[20] for a stay until that matter was resolved
[21] before the Zoning Board. That's what I'm
[22] saying.

[23] So you want us to put on evidence, and
[24] I have people here.

[25] **THE COURT:** This is not my case.

[1] zoning.

[2] **MR. JEFFERSON:** Exactly.

[3] **THE COURT:** I understand.

[4] Mr. Bernard, what do you have to say to
[5] that?

[6] **MR. BERNARD:** Well, what I have to say
[7] to that is that the operative document that
[8] brings my client here today is a Notice of
[9] Intent to Cease Operations and Order, which is
[10] Exhibit A. And it says that the Notice of
[11] Intent to Cease Operations and Order can only
[12] be vacated by obtaining an immediate stay of
[13] enforcement as set out in the Administrative
[14] Code, not the Zoning Code, or correcting the
[15] cited violations and passing inspection by the
[16] department -- that's the Department of Licenses
[17] and Inspections, obviously -- prior to the
[18] cease operations effective date.

[19] **And then it says:** Should you wish to
[20] appeal the notice of violation and the cease
[21] operations, you must file that appeal with the
[22] Board's administration within 30 days of the
[23] latter of this notice -- I don't know what
[24] latter means -- within 30 days of the latter of
[25] this notice. Then it tells how to get the

[1] **MR. JEFFERSON:** I know.

[2] **THE COURT:** I just have to decide it
[3] based on the record that's in front of me.

[4] **MR. JEFFERSON:** I know.

[5] And, Judge, what I'm saying is, it's
[6] not your case and it's not our case. It's his
[7] case. And he bears the burden of proof here
[8] when he's trying to get relief under Title 14
[9] especially. And I would make an argument --

[10] **THE COURT:** So you're basically saying
[11] even if he's right about L&I, he's not right
[12] about zoning.

[13] **MR. JEFFERSON:** That's exactly what I'm
[14] saying. And the cease would still stand.

[15] So, you know, I think that -- although
[16] I disagree with Your Honor's interpretation.
[17] And here again, with all deference to the
[18] Court, he would still have to prove the
[19] elements with respect to Title 14,
[20] notwithstanding what Your Honor would say to
[21] the City about proving why we should not give
[22] him a stay because of the compliance.

[23] **THE COURT:** I understand what you're
[24] saying, I do. You're saying basically the
[25] standard is different whether it's L&I or

[1] appeals forms.

[2] So I don't understand how counsel can
[3] shift from this document, which is why we're
[4] here today, which is why my client has been
[5] shut down, to, you know, a different ordinance,
[6] a different code without notice to the owner of
[7] the property.

[8] We have, Your Honor -- I don't mean to
[9] repeat myself. I have a tendency to do that.
[10] But we have --

[11] **THE COURT:** Well, don't repeat yourself
[12] because time is wasting away while you all are
[13] debating whether you're going to put on
[14] evidence or not.

[15] I mean, he has a point. The Notice of
[16] Intent to Cease Operations and Order does not
[17] reference zoning. It talks about L&I.

[18] **MR. JEFFERSON:** It does. It talks
[19] about the Board's administration. And then it
[20] talks about getting the stay that they could
[21] get on those violations that were cited under
[22] Title 4 from the Board of License and
[23] Inspection Review.

[24] But with respect to the zoning
[25] cease that has been made a part of the

[1] certification --

[2] **THE COURT:** But there's no order for
[3] them to cease and desist as a result of zoning
[4] violations. It's an order to cease and desist
[5] as a result of L&I.

[6] **MR. JEFFERSON:** I'd have to disagree
[7] with Your Honor.

[8] **THE COURT:** Well, where are zoning
[9] violations cited in Exhibit A?

[10] **MR. JEFFERSON:** It's saying -- even
[11] from the very beginning it's saying they
[12] conducted an inspection of the referenced
[13] premises and determined that it's in violation
[14] of the Philadelphia Code. And it's saying that
[15] these violations may pose a threat to the
[16] safety, health, and welfare of the occupants
[17] and surrounding community and require immediate
[18] correction.

[19] And then it goes on to talk about the
[20] actual case and the intent to cease operations.
[21] And then it talks about if the cease
[22] operations -- I'm sorry. The establishment
[23] will be required to close or that portion of
[24] unless -- or uses of the premises as specified
[25] in the order will be forced to cease

[1] I could call L&I myself. I could call
[2] the Board and find out whether or not a stay
[3] had been, you know, requested and what the
[4] result of that would be. But that still, I
[5] would argue and I am arguing, does not get
[6] around the Title 14 part of the certification
[7] for not having a zoning permit. Zoning permits
[8] are very specifically set out with respect to
[9] getting a zoning permit, what you need to show
[10] in the zoning code, and that's why that section
[11] is set out there. That section says you are
[12] operating without a zoning permit and/or it's
[13] creating a public nuisance or an immediate --

[14] **THE COURT:** How long has this business
[15] been going on there?

[16] **MR. JEFFERSON:** For a long time.

[17] But we had given them plenty of notice
[18] back in March. I mean, why didn't they go like
[19] the first week in April, and that way we would
[20] know whether or not they went there.

[21] **MR. BERNARD:** Well, we have 30 days.

[22] **THE COURT:** I understand your position.

[23] Mr. Jefferson, are you done with your
[24] presentation?

[25] **MR. JEFFERSON:** No, I'm not, Your

[1] immediately. And it's saying this Notice of
[2] Intent to Cease Operations and Order can only
[3] be vacated by obtaining an immediate stay of
[4] enforcement as set out in the Administrative
[5] Code -- and the Administrative Code is where I
[6] pointed to Your Honor as being technical versus
[7] nontechnical -- the Administrative Code or
[8] correcting the cited violations and passing
[9] inspection by the department prior to the cease
[10] operations effective date.

[11] Now, let me just interject one more
[12] thing, if I may, Your Honor. If there was an
[13] application for a stay, perhaps Mr. Sopin can
[14] send it to a phone so I can look at it, and
[15] then that would be some evidence that --
[16] because it seems to me -- I don't know when he
[17] went there for that because they filed the
[18] appeal on April the 3rd. This was the appeal
[19] to the Board of License and Inspection Review.
[20] They hadn't filed any other appeal.

[21] So what I'm asking counsel is, what was
[22] the date that this stay was even requested?

[23] **MR. BERNARD:** I can answer that.

[24] **MR. JEFFERSON:** So if I could ask
[25] counsel about that.

[1] Honor.

[2] I'm done with my argument to the Court.
[3] That's my argument I'm making to the Court with
[4] respect to why the evidence needs to come from
[5] that side. If Your Honor is making a
[6] determination --

[7] **THE COURT:** I'm not making any
[8] determination. I'm having a hearing on a
[9] motion now.

[10] **MR. JEFFERSON:** Okay.

[11] **THE COURT:** As I said, it's your matter
[12] not mine.

[13] **MR. JEFFERSON:** It is. It's important
[14] enough for me to want to call my witnesses,
[15] Your Honor.

[16] **THE COURT:** Then let's go.

[17] **MR. JEFFERSON:** Okay.

[18] **THE COURT:** Actually, before I do that,
[19] I do have another matter where they have an
[20] agreement. So I'm going to walk them up and do
[21] that.

[22] - - -

[23] (Whereupon, there was a break in the
[24] proceeding.)

[25] - - -

[1] **MR. JEFFERSON:** May I proceed now?
[2] **THE COURT:** Please.
[3] **MR. JEFFERSON:** Thank you.
[4] Darin Gatti, please, Your Honor.
[5] **THE COURT:** You can pull up another
[6] chair, but you all have to share. Because the
[7] other wonderful thing about this courtroom is
[8] if I put a witness over there, I can't see the
[9] witness.
[10] **MS. PENN:** No problem.
[11] I can sit back, Your Honor.
[12] **THE LAW CLERK:** Sir, can you please
[13] stand and state your first and last name into
[14] the microphone.
[15] **THE WITNESS:** My name is Darin Gatti.
[16] **THE LAW CLERK:** Can you please spell
[17] your last name.
[18] **THE WITNESS:** G-A-T-T-I.
[19] - - -
[20] ...DARIN GATTI, having been duly
[21] sworn/affirmed, was examined and testified as
[22] follows:
[23] - - -
[24] **THE LAW CLERK:** Thank you, sir.
[25] **THE COURT:** Don't forget to share that

[1] **BY MR. JEFFERSON:**
[2] **Q.** So with respect to 4087 Richmond Street, what
[3] kind of property is that?
[4] **A.** The property that's being referred to,
[5] 4087 Richmond Street, is actually the right of way of
[6] the Frankford Creek just off of Richmond Street. This
[7] is a --
[8] **THE COURT:** So, basically, it's
[9] Richmond and what?
[10] **THE WITNESS:** The nearest intersection
[11] is Richmond and Lewis. This is near the Betsy
[12] Ross Bridge or where Richmond Street crosses
[13] over the Frankford Creek. This is actually a
[14] man-made creek that was built in 1950, back
[15] around when the Betsy Ross Bridge was built.
[16] The City condemned the land and constructed
[17] this creek from just above Richmond Street down
[18] to the Delaware River. So this property in
[19] question right now is the actual right of way
[20] for the creek.
[21] **BY MR. JEFFERSON:**
[22] **Q.** Now, have you visited this property?
[23] **A.** Yes, I have.
[24] **Q.** And with respect to your visit to the property,
[25] did you observe anything happening at the property that

[1] microphone, which means passing it back and
[2] forth.
[3] **MR. JEFFERSON:** May I inquire, please?
[4] **THE COURT:** Please.
[5] **MR. JEFFERSON:** Thank you.
[6] - - -
[7] DIRECT EXAMINATION
[8] - - -
[9] **BY MR. JEFFERSON:**
[10] **Q.** Mr. Gatti, could you please tell Her Honor what
[11] position you hold with the City of Philadelphia.
[12] **A.** I'm the chief engineer and surveyor for the
[13] Philadelphia Streets Department.
[14] **Q.** And with respect to your position, have you had
[15] any experience with the property that I'm going to refer
[16] to as 4087 Richmond Street?
[17] **A.** Yes, I have.
[18] **Q.** Let's just talk about 4087 Richmond Street.
[19] **THE COURT:** I'm sorry. I just didn't
[20] hear.
[21] What department did you say?
[22] **THE WITNESS:** Streets Department.
[23] **THE COURT:** Okay. Thank you.
[24] You may continue.
[25] **MR. JEFFERSON:** Thank you, Your Honor.

[1] brings you into court right now?
[2] **A.** There's a business, which appears to be some sort
[3] of junk or salvage yard, operating on City property
[4] here.
[5] **Q.** Now, with respect to the observations that you
[6] made of this junk -- what you've referred to as a junk
[7] business --
[8] **MR. BERNARD:** He didn't refer to it as
[9] junk; objection.
[10] **THE COURT:** Sustained.
[11] **BY MR. JEFFERSON:**
[12] **Q.** How would you characterize the business that's
[13] operating right there?
[14] **MR. BERNARD:** Asked and answered;
[15] objection.
[16] **THE COURT:** Overruled.
[17] **A.** We generally refer to them as junkyards.
[18] **Q.** With respect to what you have observed to be a
[19] junkyard, does that particular operation pose any type
[20] of immediate danger to the public in terms of health,
[21] welfare, and safety of the public?
[22] **MR. BERNARD:** Your Honor, I don't mean
[23] to burden the Court's time, but that is not a
[24] proper question.
[25] **THE COURT:** Is that an objection?

[1] **MR. BERNARD:** Yes.

[2] **THE COURT:** What's the grounds?

[3] **MR. BERNARD:** That he didn't refer to

[4] it as a junkyard. That's what they called it.

[5] **THE COURT:** Overruled.

[6] **BY MR. JEFFERSON:**

[7] **Q.** You can answer.

[8] **A.** Could you repeat the question?

[9] **Q.** Not really, but I will try.

[10] With respect to what you observed at that

[11] location operating as a junkyard, could you tell Her

[12] Honor what, if any, effect that junkyard operation has

[13] upon the land such as to cause immediate harm to the

[14] public?

[15] **A.** The operation in question, there's a number of

[16] salvage vehicles there in various degrees of demolition

[17] you might say. So there's car parts, auto parts, junk

[18] cars in the site. And the site happens to be the

[19] Frankford Creek, the legal Frankford Creek. It's on the

[20] bank of the creek. And so basically the environmental

[21] danger here is that every time the creek floods, this

[22] junkyard can go under water.

[23] Well, then basically you have a bunch of junk

[24] cars in the creek, which is less than a thousand feet

[25] from the Delaware River, which is where half of

[1] characterized as a junkyard been there?

[2] **A.** I'm not sure.

[3] **Q.** More than five years?

[4] **A.** I'm not sure when it started operation.

[5] **Q.** Well, if I were to represent to you that it's

[6] been there more than five years, would you have any

[7] reason to disagree with me?

[8] **MR. JEFFERSON:** Well, objection. He's

[9] already answered the question.

[10] **THE COURT:** Overruled.

[11] You may answer the question.

[12] **A.** I don't know. We don't -- I don't hold records

[13] on it, and I don't know when the business opened

[14] operation.

[15] **THE WITNESS:** If counsel wants to

[16] present evidence that they've been in operation

[17] for five years, well, they can. Then they've

[18] been operating illegally for five years.

[19] **Q.** And how long have you held your position as Chief

[20] Engineer and Surveyor of the City of Philadelphia?

[21] **A.** For four years now.

[22] **MR. BERNARD:** No other questions.

[23] **THE COURT:** Okay.

[24] **MR. JEFFERSON:** I have nothing further.

[25] **THE COURT:** You can step back.

[1] Philadelphia gets their drinking water from. And so not

[2] only every time -- you know, every time it rains, but

[3] more importantly every time we have heavy spring floods

[4] during a high tide on the Delaware River you have a

[5] danger of oils, antifreezes, battery acids all going

[6] into the creek, which goes into the river, which goes

[7] into our drinking system.

[8] **Q.** Now, should this operation be operating at all at

[9] that location?

[10] **A.** No. It's city property.

[11] **Q.** Does the mere presence of the items that you've

[12] talked about at the location continue to pose a danger?

[13] **A.** Yes.

[14] **MR. JEFFERSON:** That's all I have, Your

[15] Honor.

[16] **THE COURT:** Okay.

[17] Cross-examine.

[18] - - -

[19] CROSS-EXAMINATION

[20] - - -

[21] **BY MR. BERNARD:**

[22] **Q.** And this is city property.

[23] How long has it been city property?

[24] **A.** Since 1950.

[25] **Q.** How long has the business that you've

[1] **THE WITNESS:** Thank you.

[2] **THE LAW CLERK:** Next witness?

[3] **MR. JEFFERSON:** James Titus.

[4] **THE LAW CLERK:** Sir, before you sit,

[5] can you please state your name for the record

[6] and spell your first and last name.

[7] **THE WITNESS:** James Titus, T-I-T-U-S.

[8] - - -

[9] ...JAMES TITUS, having been duly

[10] sworn/affirmed, was examined and testified as

[11] follows:

[12] - - -

[13] **THE LAW CLERK:** Thank you.

[14] You can sit now, sir.

[15] - - -

[16] DIRECT EXAMINATION

[17] - - -

[18] **BY MR. JEFFERSON:**

[19] **Q.** Could you please tell Her Honor what position you

[20] hold with the City of Philadelphia.

[21] **A.** I am a supervisor at East District for the City

[22] of Philadelphia, License & Inspection. I've been a

[23] supervisor for almost six years. Recently I've been

[24] transferred to East District. It was back in December,

[25] I believe. Prior to that I was in West Philadelphia.

[1] **Q.** And I just want to try to direct your attention
[2] to early March.
[3] In early March did you visit the premises?
[4] **A.** Yes.
[5] **Q.** And with respect to your visit of the premises on
[6] behalf of the Department of License & Inspection, did
[7] you do anything as a result of your observations when
[8] you were there?
[9] **A.** Usually I'm the supervisor. So the inspector
[10] would do the case and so forth and so on. I took
[11] pictures. I was there with the inspectors just to make
[12] sure everything was going all right. The inspectors did
[13] the case, and then we wrote violations. That's what we
[14] do, we write violations.
[15] **Q.** So when you say "did the case," are you intending
[16] to say that you wrote violations?
[17] **A.** Yes.
[18] **MR. BERNARD:** Objection, Your Honor.
[19] He's leading the witness.
[20] **THE COURT:** Sustained.
[21] **A.** (Continued) I did not write any violations.
[22] **THE COURT:** I sustained an objection,
[23] so you can't answer the question.
[24] **MR. JEFFERSON:** May I?
[25] **THE COURT:** Next question.

[1] What is this exhibit?
[2] **MR. JEFFERSON:** Your Honor, these are
[3] the notices of violations that are, you know,
[4] here at issue before you.
[5] **THE COURT:** That's fine.
[6] **MR. BERNARD:** In the issue of time,
[7] I'll stipulate that we have these notices of
[8] violations. They're also listed in our
[9] Complaint.
[10] **THE COURT:** Well, then complaining that
[11] you don't have copies of them really isn't a
[12] true complaint because you're very familiar
[13] with them because you attached them, so...
[14] **MR. BERNARD:** I didn't attach them. I
[15] attached the list of violations. These are
[16] the --
[17] **THE COURT:** All right. I understand.
[18] **THE LAW CLERK:** Can I have them,
[19] please?
[20] **MR. JEFFERSON:** Yes.
[21] **THE LAW CLERK:** And what am I marking
[22] them as, sir?
[23] **MR. JEFFERSON:** Collectively as City
[24] Exhibit A.
[25] ---

[1] **BY MR. JEFFERSON:**
[2] **Q.** What do you mean by "case"?
[3] **A.** The inspector will write violations on the said
[4] property.
[5] **Q.** And relative to the violations that were written,
[6] have you come into possession of them?
[7] **A.** The violations?
[8] **Q.** Yes.
[9] **A.** Yes. We printed them out and delivered them.
[10] **Q.** I'm going to hand you what I will refer to the
[11] Court as City's Exhibit 1 and ask that you take a look
[12] at it and tell me --
[13] **THE COURT:** Well, you need to show it
[14] to Mr. Bernard.
[15] **MR. JEFFERSON:** Yes, I do.
[16] Thank you, Your Honor.
[17] **THE LAW CLERK:** Are you marking this
[18] exhibit, counsel?
[19] **MR. JEFFERSON:** I am.
[20] **MR. BERNARD:** Your Honor, there are
[21] exhibits that are being marked that I'm not
[22] permitted to have copies of. So that doesn't
[23] make any sense to me, but...
[24] **MR. JEFFERSON:** Well --
[25] **THE COURT:** I'm sorry.

[1] (Whereupon, City Exhibit A was marked
[2] for identification.)
[3] ---
[4] **THE LAW CLERK:** Do you need them back?
[5] **MR. JEFFERSON:** I do.
[6] **THE COURT:** No one ever brings copies
[7] to this court. I'm used to it.
[8] **MR. JEFFERSON:** I apologize.
[9] **BY MR. JEFFERSON:**
[10] **Q.** But, in any event, I'm going to hand you what has
[11] been marked as City Exhibit A. Could you please tell
[12] Her Honor what they represent.
[13] **A.** This is a violation notice sent to the property
[14] at 4087 Richmond Street, Frankford Creek right of way
[15] a/k/a 4087 to Mr. Holton, who is alleging to be the
[16] owner.
[17] **Q.** And what's the date of that?
[18] **A.** It says, 3/2/2017.
[19] **Q.** It says, Initial Notice of Violation and Order.
[20] It says at the top on March the 2nd and March the 8th.
[21] Is that the date when the notice would have been
[22] sent?
[23] **A.** I believe so.
[24] **Q.** And there's a second part of Exhibit A. Could
[25] you please identify that and tell Her Honor what that

[1] is.

[2] **A.** Creedon, Kevin Creedon, K Squad, alleged tenant
[3] of Mr. Holton, saying this is a violation, the same
[4] thing, 4087 Richmond Street, Frankford Creek right of
[5] way a/k/a 4087. On 3/9 the Department of License and
[6] Inspection -- we went back out there to give them the
[7] paperwork and the intent to cease.

[8] **Q.** Let me just stop you right there.

[9] With respect to the address set out as the
[10] property in violation, were you here during Mr. Gatti's
[11] testimony?

[12] **A.** Yes.

[13] **Q.** Is that the same property that Mr. Gatti was
[14] testifying about?

[15] **A.** Yes.

[16] **Q.** I'm going to hand you what I'm going to refer to
[17] as City Exhibit B.

[18] ---

[19] (Whereupon, City Exhibit B was marked
[20] for identification.)

[21] ---

[22] **THE COURT:** Again, you need to show
[23] Mr. Bernard before you use it.

[24] **MR. JEFFERSON:** I do have one copy of
[25] this.

[1] written?

[2] **A.** Yes.

[3] **MR. JEFFERSON:** So that's going to be
[4] Exhibit B, Your Honor.

[5] **MR. BERNARD:** I have no objection to
[6] these, Your Honor. These are attached to our
[7] Complaint.

[8] **THE COURT:** So you have no objection to
[9] Exhibit B being admitted.

[10] **MR. BERNARD:** I have no objection to
[11] Exhibit B being admitted.

[12] **THE COURT:** So Exhibit City B is
[13] admitted into evidence.

[14] ---

[15] (Whereupon, City Exhibit B was moved
[16] into evidence.)

[17] ---

[18] **MR. JEFFERSON:** Now, if counsel is not
[19] objecting, I don't want to go through the whole
[20] thing for the same intent that's issued simply
[21] to Mr. Creedon and not to Mr. Holton. It's the
[22] same intent.

[23] **MR. BERNARD:** Your Honor, what we're
[24] agreeing to is that these notices were issued.

[25] Now, as to the violations themselves,

[1] **THE COURT:** Then let Mr. Bernard have
[2] the copy.

[3] **MR. BERNARD:** Judge, I think I can
[4] speed things up.

[5] This Notice of Intent to Cease
[6] Operations is what we're appealing. The
[7] violations that counsel and the witness are
[8] referring to are the violations listed in our
[9] Complaint under Exhibit B.

[10] **THE COURT:** So are you basically saying
[11] you have no objection to the entry of City A
[12] and B into evidence?

[13] **MR. BERNARD:** I'm not saying that.

[14] **THE COURT:** Go ahead.

[15] **BY MR. JEFFERSON:**

[16] **Q.** I'll ask you to take a look at what we're going
[17] to refer to here as City Exhibit B.

[18] Do you recognize what that is?

[19] **A.** Notice of Intent to Cease Order for address
[20] violation 4087 Richmond Street, Mr. Robert Holton or
[21] Holton, Robert.

[22] **Q.** And was that served upon the person to whom it is
[23] addressed?

[24] **A.** Yes.

[25] **Q.** In or around the same time as the violations were

[1] that the violations are --

[2] **THE COURT:** All you're agreeing to is
[3] this document is what it purports to be. I
[4] understand that you're not agreeing to the
[5] contents of the document.

[6] **MR. BERNARD:** Very well, Your Honor.
[7] Thank you.

[8] **THE COURT:** Okay.

[9] **MR. JEFFERSON:** May I proceed then,
[10] Your Honor?

[11] **THE COURT:** You may.

[12] **BY MR. JEFFERSON:**

[13] **Q.** With respect to the violation notices that had
[14] been marked and to which you've testified, Exhibit A,
[15] and this Notice of Intent to Cease Operations, were
[16] these the things that basically set out what the code
[17] violations were for the operations that were being
[18] conducted at that location?

[19] **A.** The Intent to Cease is the notice telling them
[20] that they're going to be ceased. The violations was the
[21] first part, which they were hand-delivered and so was
[22] the Intent to Cease.

[23] **Q.** So these are what you, as a supervisor, would
[24] have given to Mr. Holton and to Mr. Creedon?

[25] **A.** Yes. They're also mailed out. But we did

[1] hand-deliver them.

[2] **MR. JEFFERSON:** Now, if I may, Your
[3] Honor, never having seen these before, I can
[4] represent that I have another initial notice of
[5] violation made out to Mr. Holton and a final
[6] warning that's made out to Kevin Creedon.
[7] These were a part of Exhibit A.

[8] **THE COURT:** Well, I mean --

[9] **MR. JEFFERSON:** I just don't want it to
[10] be omitted from the record.

[11] **THE COURT:** Well, presumably at some
[12] point you're going to seek to admit City A.
[13] And either there will be an objection or there
[14] won't, and I'll rule on it. And either it will
[15] become part of the record or it won't.

[16] And, by the way, I don't have a
[17] preference as to whether you seek admission as
[18] you go or you wait until the end of your
[19] presentation.

[20] **MR. JEFFERSON:** That's fine.

[21] **THE COURT:** Although I typically don't
[22] look at exhibits until they're admitted, so...

[23] **MR. JEFFERSON:** So that's why I'm
[24] making the point.

[25] At this point I will move for their

[1] of exhibits.

[2] **BY MR. JEFFERSON:**

[3] **Q.** So I want to hand you four pages of paper, which
[4] I want to refer to for purposes of the record -- I'm
[5] going to show them to counsel, but I'm going to refer to
[6] these, Mr. Titus, as Exhibit C for the City.

[7] ---

[8] (Whereupon, City Exhibit C was marked
[9] for identification.)

[10] ---

[11] **MR. JEFFERSON:** And I will represent
[12] that the certification that I'm handing to the
[13] witness is in his pleading.

[14] **MR. BERNARD:** I have this, Your Honor.
[15] It is part of our Complaint.

[16] **THE COURT:** Okay.

[17] **BY MR. JEFFERSON:**

[18] **Q.** So, very briefly, was this the certification that
[19] was served to Mr. Holton and Mr. Creedon along with the
[20] intent to cease?

[21] **A.** That's correct.

[22] **MR. JEFFERSON:** So I will move for
[23] their admission at this time, Your Honor.

[24] **THE COURT:** Any objection?

[25] **MR. BERNARD:** No objection.

[1] admission so Your Honor can take a look.

[2] **THE COURT:** So you're moving City A in.

[3] **MR. JEFFERSON:** Yes, I am.

[4] **THE COURT:** Is there an objection?

[5] **MR. BERNARD:** I have a question, but I
[6] will not object to the admission of the
[7] Exhibit.

[8] **THE COURT:** Okay.

[9] City A is admitted subject to what?

[10] **MR. BERNARD:** Cross-exam.

[11] **THE COURT:** Oh, of course.

[12] So City A is admitted into evidence for
[13] purposes of this hearing.

[14] **MR. JEFFERSON:** Thank you.

[15] ---

[16] (Whereupon, City Exhibit A was moved
[17] into evidence.)

[18] ---

[19] **MR. JEFFERSON:** And have we marked City
[20] Exhibit B yet?

[21] **THE COURT:** City B has been admitted.

[22] **MR. JEFFERSON:** Okay.

[23] Thank you, Your Honor.

[24] **THE COURT:** Although you all are in big
[25] trouble if you're counting on me to keep track

[1] **THE COURT:** So City C is admitted.

[2] ---

[3] (Whereupon, City Exhibit C was moved
[4] into evidence.)

[5] ---

[6] **BY MR. JEFFERSON:**

[7] **Q.** And with respect to the implementation of the
[8] cease operations at the premises located at 4087
[9] Richmond Street, did the Notice of Intent to Cease
[10] Operations --

[11] **THE COURT:** You're not using the mike,
[12] which means I can't hear you.

[13] **Q.** (Continued) And now with respect to the site
[14] violation, when was the cease operations to have taken
[15] place at the premises?

[16] **MR. BERNARD:** I object to the form of
[17] that. The document speaks for itself.

[18] **MR. JEFFERSON:** The document doesn't
[19] speak for itself.

[20] **THE COURT:** Overruled.

[21] **MR. JEFFERSON:** But I will withdraw the
[22] question.

[23] **THE COURT:** All right. Fine.

[24] **BY MR. JEFFERSON:**

[25] **Q.** So when did the Department of Licenses and

[1] Inspections go to the premises to execute the cease
[2] operations?
[3] **A.** Today.
[4] **Q.** And was today the date that was set forth as
[5] being the date when the department was going to appear
[6] at the premises to implement the cease operations?
[7] **A.** That's correct.
[8] **Q.** And where does it say that?
[9] **A. It says here:** The intent to cease operations
[10] will be effective 4/12/17.
[11] **THE COURT:** Which document are you --
[12] **THE WITNESS:** Document B, Notice of
[13] Intent to Cease Operations.
[14] **THE COURT:** Okay. I see it.
[15] Thank you.
[16] **BY MR. JEFFERSON:**
[17] **Q.** Now I'm going to hand you two pieces of paper
[18] that I'm going to refer to as City Exhibit D. And I'm
[19] going to hand them to counsel so he can take a look at
[20] them.
[21] ---
[22] (Whereupon, City Exhibit D was marked
[23] for identification.)
[24] ---
[25] **MR. BERNARD:** Your Honor, these I

[1] **THE COURT:** Yes, I agree. You'll get
[2] your cross.
[3] **MR. BERNARD:** Okay.
[4] **MR. JEFFERSON:** So if I may, Your
[5] Honor?
[6] **THE COURT:** But you do need to wrap up
[7] so he can get to his cross.
[8] **BY MR. JEFFERSON:**
[9] **Q.** These were presented today at the premises to
[10] whom at the premises?
[11] **A.** Robert Holton and the guy from K Squad. I'm not
[12] sure of his name.
[13] **Q.** Is that Mr. Creedon?
[14] **A.** Mr. Creedon.
[15] **Q.** Thank you very much.
[16] **MR. JEFFERSON:** And these are Exhibit
[17] D. And I would respectfully ask that they be
[18] marked and moved into evidence, Your Honor.
[19] **THE COURT:** Okay.
[20] Any objection to the admission of
[21] Exhibit D?
[22] **MR. BERNARD:** No objection.
[23] **THE COURT:** City D is admitted into
[24] evidence for purposes of the hearing.
[25]

[1] haven't seen before. So if I can just take a
[2] minute to look at them.
[3] **THE COURT:** You may.
[4] (Brief pause.)
[5] **MR. BERNARD:** Thank you.
[6] **BY MR. JEFFERSON:**
[7] **Q.** Now, referring your attention to what's being
[8] called City Exhibit D, could you please identify what
[9] these documents are. Tell Her Honor what they're used
[10] for.
[11] **A.** This is a site violation notice that is given to
[12] the owner, telling them that they're going to be ceased
[13] and this is why; zoning, fire, obtain zoning for use
[14] permit, all uses on premise or property. And then the
[15] corrective action; vacate property for existing wrecking
[16] yard or obtain all permits and -- I can't understand
[17] Silvio's writing -- contact the Department of Licenses
[18] and Inspections.
[19] **Q.** Do you recognize what they are, these city
[20] documents or these documents that were presented today?
[21] **A.** Yes.
[22] **MR. BERNARD:** Presented to whom, if I
[23] can ask?
[24] **MR. JEFFERSON:** Well, that's a
[25] cross-examination question.

[1] ---
[2] (Whereupon, City Exhibit D was moved
[3] into evidence.)
[4] ---
[5] **BY MR. JEFFERSON:**
[6] **Q.** And, lastly, I'm handing you four photographs.
[7] Now, before you look at those photographs, I want
[8] to refer to the photographs as City Exhibit E, 1 through
[9] 4. And I will do it in the order in which I handed them
[10] to counsel.
[11] ---
[12] (Whereupon, City Exhibit E, 1 through
[13] 4, were marked for identification.)
[14] ---
[15] **MR. BERNARD:** Well, I have them all at
[16] once.
[17] But, go ahead.
[18] **MR. JEFFERSON:** So if I may inquire of
[19] the witness very briefly about these, Your
[20] Honor?
[21] **THE COURT:** You may.
[22] **BY MR. JEFFERSON:**
[23] **Q.** So I'm going to refer your attention to the first
[24] photograph, which we're going to call City Exhibit E-1.
[25] **MR. JEFFERSON:** With the Court's

Page 57

[1] permission can I write E-1 on this?

[2] **THE COURT:** Yes.

[3] **MR. JEFFERSON:** Thank you.

[4] **BY MR. JEFFERSON:**

[5] **Q.** Looking at what I'm referring to as City Exhibit

[6] E-1, could you please tell Her Honor what's depicted

[7] there.

[8] **A.** Cars piled. It's basically a scrapyard.

[9] **Q.** And where was this photograph taken?

[10] **A.** At the property on Richmond Street, 4087 Richmond

[11] Street.

[12] **Q.** And were you present at the time that these

[13] photographs were taken?

[14] **A.** Yes. I was in the front and Silvio was in the

[15] back.

[16] **Q.** Do they accurately portray what you saw when you

[17] were at the premises?

[18] **A.** Again, I didn't go to the back. Mr. Silvio took

[19] the pictures from the back. But from a distance I would

[20] say, yes, it's just a scrapyard.

[21] **Q.** So they're representative of what was at the

[22] scrapyard, as you are calling it, at the time when the

[23] photograph was taken.

[24] **A.** Yes.

[25] **Q.** And when was the photograph taken?

Page 59

[1] **BY MR. JEFFERSON:**

[2] **Q.** Directing your attention to what's been marked as

[3] City Exhibit E-2, do you recognize what's depicted in

[4] that photograph?

[5] **A.** Yes. It's part of the scrapyard. It's a work

[6] station where they dismantle parts.

[7] **Q.** Is that how it appeared at the time when the

[8] photograph was taken?

[9] **A.** Again, I believe so. I was in the front and

[10] Mr. Silvio took the pictures.

[11] **Q.** And are you responsible to collect -- as a

[12] supervisor at the premises is it your responsibility

[13] that what evidence is collected there comes through you

[14] and you are responsible for that evidence?

[15] **A.** I wouldn't say that. I had hands-on because I

[16] was there, yes. And I did ask for these documents

[17] because we were called to come down here, yes.

[18] **Q.** So these are the documents --

[19] **A.** That Mr. Silvio gave me, yes.

[20] **Q.** -- that were generated on the premises at the

[21] time that you went today, and you collected them to

[22] bring them to court today for this proceeding.

[23] **A.** That's correct.

[24] **Q.** And this is of the premises at 4087.

[25] **A.** That's correct.

Page 58

[1] **A.** It was taken this afternoon.

[2] **Q.** Okay. Thank you.

[3] **MR. JEFFERSON:** So that's E-1, Your

[4] Honor. I would move for the admission of E-1,

[5] Your Honor.

[6] **THE COURT:** Any objection?

[7] **MR. BERNARD:** Can I see it again?

[8] (Brief pause.)

[9] **MR. BERNARD:** No objection.

[10] **THE COURT:** City E-1 is admitted.

[11] **MR. JEFFERSON:** Thank you.

[12] - - -

[13] (Whereupon, City Exhibit E-1 was moved

[14] into evidence.)

[15] - - -

[16] **BY MR. JEFFERSON:**

[17] **Q.** Now I'm going to refer your attention to -- I am

[18] going to refer to this as City E-2. I'm writing E-2 up

[19] on the corner.

[20] **THE COURT:** It would be nice if you

[21] wrote City E-2. That's what you've been

[22] calling them.

[23] **MR. JEFFERSON:** City E-2, Your Honor.

[24] Thank you.

[25]

Page 60

[1] **Q.** Okay. Thank you very much.

[2] **MR. BERNARD:** May I see that?

[3] **MR. JEFFERSON:** Certainly.

[4] **MR. BERNARD:** Your Honor, I'm not going

[5] to agree to this Exhibit, if that's what

[6] counsel is asking --

[7] **THE COURT:** Well, he hasn't moved it

[8] in.

[9] **MR. BERNARD:** -- until I've had an

[10] opportunity to ask questions.

[11] **THE COURT:** Well, since I'm giving him

[12] three more minutes with this witness, you're

[13] going to have an opportunity to ask questions.

[14] **MR. JEFFERSON:** So I would move for the

[15] admission pending, you know, the ruling of the

[16] Court on the basis of counsel's questions.

[17] **THE COURT:** Sir, did you see that?

[18] Were you in the place where that photograph was

[19] taken?

[20] **THE WITNESS:** Yes, Your Honor.

[21] But, again, I was in the front

[22] attending to Mr. Holton and --

[23] **THE COURT:** Well, did you see what is

[24] depicted in E-2?

[25] **THE WITNESS:** Did I see it?

Page 61

[1] **THE COURT:** Yes.

[2] **THE WITNESS:** I didn't go that far

[3] back, no.

[4] **THE COURT:** Okay. That's what I'm

[5] asking.

[6] **THE WITNESS:** Silvio did. He took the

[7] pictures.

[8] **MR. JEFFERSON:** I'll call Silvio.

[9] **THE COURT:** Well, not today you won't.

[10] But, go ahead.

[11] **MR. JEFFERSON:** Okay.

[12] **THE COURT:** I mean, I only have what

[13] time I have. I can't keep staff here

[14] indefinitely.

[15] **MR. JEFFERSON:** I think I can bring

[16] Silvio up here just to say --

[17] **THE COURT:** Well, Mr. Bernard needs to

[18] cross this witness.

[19] **MR. JEFFERSON:** Okay.

[20] Thank you, Your Honor.

[21] **THE COURT:** So it's pointless to show

[22] him photographs when he doesn't have personal

[23] knowledge of them.

[24] Is there anything else you need to get

[25] out of this witness?

Page 63

[1] **Q.** And was the certification on the basis of the

[2] violations that were observed and that were subsequently

[3] written in the Notice of Violation?

[4] **A.** Yes.

[5] **Q.** So the certification certifies that on the basis

[6] of those violations that have been written, that this

[7] premises poses an imminent threat to the health,

[8] welfare, and safety of the public.

[9] **MR. BERNARD:** I object to that

[10] question.

[11] **THE COURT:** Sustained.

[12] **BY MR. JEFFERSON:**

[13] **Q.** So whatever the department wrote in the

[14] certification is based upon the violations that were

[15] written and the intent to cease; is that correct?

[16] **A.** That's correct.

[17] **MR. JEFFERSON:** That's all I have.

[18] **THE COURT:** Mr. Bernard, cross-examine.

[19] ---

[20] CROSS-EXAMINATION

[21] ---

[22] **BY MR. BERNARD:**

[23] **Q.** Mr. Titus, you are the East District Operations

[24] Supervisor, are you not?

[25] **A.** Yes.

Page 62

[1] **MR. JEFFERSON:** Well, no, except for

[2] the fact that --

[3] **BY MR. JEFFERSON:**

[4] **Q.** Are these the violations that you observed at

[5] that premises on behalf of the department? Are they the

[6] violations that warranted the certification in this case

[7] of it being a danger to the public?

[8] **MR. BERNARD:** Well, I object to the

[9] form of the question. I also object to the

[10] question itself. This witness has been called

[11] to identify certain documents. He's not

[12] testifying as to the ultimate facts that the

[13] City intends to prove.

[14] **THE COURT:** Give me the question again.

[15] **MR. JEFFERSON:** Yes, Your Honor.

[16] **BY MR. JEFFERSON:**

[17] **Q.** First of all, who issues the certification?

[18] **THE COURT:** All right. You're going to

[19] ask a different question. That's fine, too.

[20] **Q.** (Continued) Who issues the certification?

[21] **A.** The certification letter?

[22] **Q.** Yes.

[23] **A.** We hand-delivered that, the department.

[24] **Q.** "We" meaning the department; right?

[25] **A.** Yes.

Page 64

[1] **Q.** And you issued Exhibit B, did you not? Do you

[2] have it in front of you?

[3] **MR. JEFFERSON:** The violation notice?

[4] **MR. BERNARD:** Yes.

[5] **A.** The inspector issues it. We hand-delivered that.

[6] **Q.** It's your name on it, isn't it?

[7] **A.** I signed it, yes.

[8] **Q.** That's really what I'm asking.

[9] **A.** That's my signature for the Intent to Cease and

[10] the Notice of Intent to Cease.

[11] **Q.** Now, it says on the top, "Date of original

[12] notice, March 2, 2017."

[13] What is the original notice?

[14] **A.** That would be the violation notice.

[15] **Q.** And isn't it true that the inspection was

[16] conducted on March 2nd?

[17] **A.** Yes, I believe so.

[18] **Q.** And it's fair to say that the violation notices

[19] are then backdated to the date of the inspection.

[20] **A.** Yes.

[21] **Q.** And are you aware that my client has appealed

[22] this Notice of Intent to Cease Operations and Order to

[23] the License and Inspection Review Board?

[24] **A.** He stated that he did today.

[25] **Q.** Pardon me?

Page 65

[1] **A.** He stated that he did today at the time of the
 [2] cease.
 [3] **Q.** Who stated? Mr. Holton?
 [4] **A.** Yes.
 [5] **Q.** And isn't that in accordance with the
 [6] instructions in Exhibit B?
 [7] Appeal forms may be obtained on line, and then
 [8] they give the website number, or in person at, and then
 [9] they give the address of the Board of License and
 [10] Inspection Review.
 [11] Did I read that correctly?
 [12] **A.** I'm not sure where you're at.
 [13] **Q.** Let me try again. I know we're running out of
 [14] time. I direct your attention to the fifth paragraph of
 [15] the Notice, starting with the word "appeal".
 [16] **A.** It appears to be on here, that's correct.
 [17] **Q.** And isn't that what my client did? Didn't he
 [18] comply with that?
 [19] **A.** I don't know. He said he did. He said he
 [20] applied for an appeal.
 [21] **Q.** Do you have any reason to believe he didn't?
 [22] **A.** No.
 [23] **Q.** Now, given the fact that the appeal was taken,
 [24] why is your department enforcing this order?
 [25] **A.** My understanding is because it doesn't have any

Page 67

[1] violation notices are issued; is that correct?
 [2] **A.** That's correct.
 [3] **Q.** And why are they backdated to March 2nd?
 [4] **A.** Because we had to -- we went out there, we found
 [5] violations, and then we had to do the letter for the
 [6] certification.
 [7] **Q.** In the Certification of Violations -- and I
 [8] believe that's --
 [9] **MR. BERNARD:** What Exhibit is that? I
 [10] believe that's C, isn't it?
 [11] **MR. JEFFERSON:** I believe it was D.
 [12] **THE COURT:** C.
 [13] **BY MR. BERNARD:**
 [14] **Q.** In the Certification of Violations it's a Cease
 [15] Operations Order pursuant to Title 14 of the Zoning and
 [16] Planning Code; is that correct?
 [17] **A.** I believe so.
 [18] **Q.** Now, what is the difference between the Zoning
 [19] and Planning Code and the Building, Construction,
 [20] Occupancy Code?
 [21] **MR. JEFFERSON:** Objection, Your Honor.
 [22] I mean, that's a very broad question.
 [23] **THE COURT:** Overruled.
 [24] You may answer.
 [25] **A.** I don't know. The Building Code is different

Page 66

[1] zoning or licenses or anything that it needs to operate
 [2] a business.
 [3] **Q.** As a matter of fact, isn't it the City's -- well,
 [4] are you familiar with LR zoning? Are you familiar with
 [5] that classification?
 [6] **A.** No.
 [7] **Q.** So would you have any reason to dispute the fact
 [8] that my client, as alleged in his Complaint on Page 3,
 [9] subparagraph L, alleges plaintiff is in compliance with
 [10] zoning classification LR and always has been in
 [11] compliance?
 [12] **MR. JEFFERSON:** Objection, Your Honor.
 [13] **Q.** (Continued) Do you have any reason to dispute
 [14] that?
 [15] **THE COURT:** Overruled.
 [16] You may answer the question.
 [17] **THE WITNESS:** I have no understanding
 [18] of what he's talking about as far as the
 [19] R classes. I'm not the Zoning Review Board.
 [20] **THE COURT:** That's fine.
 [21] All right. Go ahead.
 [22] **MR. BERNARD:** Thank you.
 [23] **BY MR. BERNARD:**
 [24] **Q.** So going back to the chronology here, the
 [25] inspection on March 2nd, sometime after that these

Page 68

[1] than the Zoning Code. Once it's built, then I get it.
 [2] I don't get it while they're building it, and I don't
 [3] receive it while they're in the zoning. There's
 [4] different departments.
 [5] **Q.** I'll certainly take that answer.
 [6] And if I told you that in the Complaint that we
 [7] filed today -- just give me a second. My client stated
 [8] in Paragraph 7: "Plaintiff is innocent of the alleged
 [9] violations and alleged missing licenses." And then he
 [10] lists things that he says that he's done or violations
 [11] that are not violations.
 [12] Have you read that Page 3? If you haven't, I'll
 [13] show it to you.
 [14] **MR. JEFFERSON:** Objection.
 [15] **THE COURT:** What's the basis? Tell me
 [16] the basis in two words.
 [17] **MR. JEFFERSON:** Assumes facts not in
 [18] evidence. They're not in evidence. None of
 [19] those facts that he's talking about are in
 [20] evidence. This is cross-examination.
 [21] **THE COURT:** Overruled.
 [22] **MR. BERNARD:** Let me show it to the
 [23] witness.
 [24] **BY MR. BERNARD:**
 [25] **Q.** Now, Mr. Titus, you did sign this Notice of

Page 69

[1] Intent and this is my client's response.
[2] **A.** What's the question? You want me to read Page 3
[3] and what?
[4] **Q.** You can just take a look at it.
[5] Do you have any reason --
[6] **A.** I have no idea what it is.
[7] **Q.** It's my client's response to the violations.
[8] **THE COURT:** Mr. Bernard, what's your
[9] question?
[10] **Q.** (Continued) Do you have any reason to dispute
[11] what's on Page 3?
[12] **A.** He can't obtain any licenses if he doesn't have
[13] possession of the property. You can't get zoning if you
[14] don't own the property. So I don't know how he could
[15] have an auto wrecking license. There are none.
[16] **MR. BERNARD:** I'll take that answer,
[17] Your Honor.
[18] **THE COURT:** Mr. Bernard, please don't
[19] comment on answers, just ask questions.
[20] **MR. BERNARD:** Sorry.
[21] **THE COURT:** Do you have another
[22] question?
[23] **MR. BERNARD:** No.
[24] **THE COURT:** Okay. No further questions
[25] of the witness.

Page 71

[1] **THE WITNESS:** First name is Silvio.
[2] It's S-I-L-V-I-O. Last name is Di Guglielmo.
[3] It's D-I-G-U-G-L-I-E-L-M-O. I'm with
[4] Philadelphia Licenses and Inspections, Code
[5] Inspector.
[6] ---
[7] ...SILVIO DI GUGLIELMO, having been
[8] duly sworn/affirmed, was examined and testified
[9] as follows:
[10] ---
[11] **THE LAW CLERK:** Thank you, sir.
[12] You can have a seat.
[13] **MR. JEFFERSON:** May I very briefly,
[14] Your Honor?
[15] **THE COURT:** Yes, briefly.
[16] **MR. JEFFERSON:** Counsel, can I have
[17] that photograph back, please?
[18] ---
[19] DIRECT EXAMINATION
[20] ---
[21] **BY MR. JEFFERSON:**
[22] **Q.** Were you present at the premises that we're
[23] talking about today?
[24] **A.** Yes.
[25] **Q.** And relative to your being there as an inspector

Page 70

[1] **MR. BERNARD:** No further questions.
[2] **THE COURT:** Any redirect of this
[3] witness?
[4] **MR. JEFFERSON:** Very briefly.
[5] **THE COURT:** Okay.
[6] **MR. JEFFERSON:** No, Your Honor. I'll
[7] stop where I am.
[8] Thank you.
[9] **THE COURT:** Okay.
[10] **THE LAW CLERK:** Do you have any other
[11] witnesses?
[12] **MR. JEFFERSON:** I think if counsel
[13] would just stipulate to these photographs --
[14] **MR. BERNARD:** Well, I can't stipulate
[15] to the photographs. There's one photograph
[16] that I did agree to be admitted, the first one,
[17] because I'm familiar with it.
[18] **MR. JEFFERSON:** Okay.
[19] So may I call the person just to say he
[20] took the photographs?
[21] **THE COURT:** Go ahead.
[22] **MR. JEFFERSON:** Thank you, Your Honor.
[23] **THE LAW CLERK:** Sir, before you sit,
[24] would you please state your name for the record
[25] and spell your first and last name.

Page 72

[1] within the Philadelphia Department of Licenses and
[2] Inspections, did you take pictures?
[3] **A.** I did.
[4] **Q.** And would you look at the pictures that I'm going
[5] to refer to as City Exhibit E-2 and -- I'll refer to it
[6] as City Exhibit E-5, I believe.
[7] ---
[8] (Whereupon, City Exhibit E-5 was marked
[9] for identification.)
[10] ---
[11] **BY MR. JEFFERSON:**
[12] **Q.** Would you look at these two photographs?
[13] **A.** Yes.
[14] **Q.** Did you take them?
[15] **A.** I took the pictures, yes.
[16] **Q.** Is that what you saw --
[17] **THE COURT:** I'm sorry.
[18] You said E-2 and E-5?
[19] **MR. JEFFERSON:** I think the other ones
[20] I moved into evidence already.
[21] **THE COURT:** No. You only moved in E-1.
[22] **BY MR. JEFFERSON:**
[23] **Q.** Take a look at E-2.
[24] **A.** Yes.
[25] **Q.** Does that represent what you saw at the premises

Page 73

[1] today?

[2] **A.** Yes.

[3] **Q.** Can I take that, please?

[4] **MR. JEFFERSON:** Counsel, you already

[5] saw E-2.

[6] **MR. BERNARD:** I have a question on E-2.

[7] **THE COURT:** Well, he's testifying. You

[8] don't get to have questions now.

[9] **MR. JEFFERSON:** I would move for the

[10] admission of E-2, based on the testimony.

[11] **THE COURT:** Any objection?

[12] **MR. BERNARD:** I object because I want

[13] to cross-examine.

[14] **THE COURT:** Well, you'll get to

[15] cross-examine him.

[16] How many photos are there?

[17] **MR. JEFFERSON:** A couple, Your Honor.

[18] **THE COURT:** Show them all to him, ask

[19] him if he took them, and then give them to the

[20] other side to cross-examine.

[21] **MR. JEFFERSON:** All right. We can do

[22] that.

[23] **BY MR. JEFFERSON:**

[24] **Q.** I'm handing you additional photographs, three of

[25] them. Take a look at them.

Page 75

[1] removing of parts. It's a dismantling station, it seems

[2] like, where they take parts.

[3] **Q.** And what is wrong with that photograph? What's

[4] depicted in that photograph?

[5] **A.** There's illegal electrical wiring hanging.

[6] **Q.** How can you tell that?

[7] **A.** It's not proper wiring. It's internal wiring.

[8] It's not external wiring.

[9] **Q.** And is something wrong with the wiring?

[10] **THE COURT:** I'm sorry.

[11] Is it Mr. Di Guglielmo?

[12] **THE WITNESS:** Silvio is fine.

[13] **THE COURT:** No, no, not in court.

[14] **THE WITNESS:** Di Guglielmo.

[15] **THE COURT:** Mr. Di Guglielmo, if you

[16] could move the mike to you.

[17] Thank you.

[18] **THE WITNESS:** You're welcome.

[19] **THE COURT:** Go ahead, Mr. Bernard.

[20] **BY MR. BERNARD:**

[21] **Q.** Mr. Di Guglielmo, the photograph that is marked

[22] as E-2 has wiring near the ceiling; is that correct?

[23] **A.** Right.

[24] **Q.** It also has a "no smoking" sign, does it not?

[25] **A.** Yes.

Page 74

[1] Were all of these photographs taken today?

[2] **A.** Yes.

[3] **Q.** By you?

[4] **A.** Yes.

[5] **Q.** At the premises?

[6] **A.** Yes.

[7] **MR. JEFFERSON:** Okay. Thank you.

[8] **THE COURT:** Cross-examine.

[9] And what are the exhibit numbers?

[10] **MR. JEFFERSON:** It's going to be E-2,

[11] E-3, City E-4, City E-5.

[12] **THE LAW CLERK:** And they're all going

[13] to Mr. Bernard.

[14] **THE COURT:** So 2, 3, 4 and 5 are going

[15] to Mr. Bernard.

[16] Mr. Bernard, do you have any questions

[17] of this witness?

[18] **MR. BERNARD:** Yes, I do, Your Honor.

[19] **THE COURT:** Please go ahead.

[20] ---

[21] CROSS-EXAMINATION

[22] ---

[23] **BY MR. BERNARD:**

[24] **Q.** What is it that is depicted in E-2?

[25] **A.** E-2 is a workstation where there's dismantling or

Page 76

[1] **Q.** And, in fact, one of the violations that's listed

[2] in the certification of violations is, quote, no "no

[3] smoking" signs.

[4] **A.** Correct.

[5] **Q.** So that's not a violation, is it?

[6] **A.** No.

[7] Well, the violations were at the time of the

[8] inspection. So today some violations were corrected.

[9] **Q.** You lost me.

[10] We're talking about this one photograph --

[11] **A.** What's your question?

[12] **Q.** -- No. 2.

[13] Well, the "no smoking" sign is not a violation,

[14] is it?

[15] **A.** No, it's not.

[16] **Q.** In fact, he's accused of not having a "no

[17] smoking" sign.

[18] **A.** That's correct. But the picture was from today.

[19] That's today's photographs. The violations were served

[20] on -- I believe a month ago.

[21] **Q.** Well, I think the purpose of this photograph is

[22] to demonstrate that my client is --

[23] **A.** And the one violation also is for illegal

[24] electrical wiring, also. That's what it's showing.

[25] **Q.** I don't see any illegal electrical wiring.

Page 77

[1] Can you explain it?

[2] **A.** Right here, sir, the yellow wiring. It's not

[3] outdoor wiring, sir.

[4] **Q.** But we're looking indoors. That's indoors.

[5] **A.** That's not indoors, sir. It's a canopy.

[6] **Q.** Okay.

[7] **A.** You need permanent wiring, sir.

[8] You can also see the wiring right there in that

[9] other photograph.

[10] **THE COURT:** Mr. Di Guglielmo, let's do

[11] question and answer. Okay?

[12] **THE WITNESS:** I'm sorry.

[13] **THE COURT:** That's okay.

[14] **THE WITNESS:** I apologize.

[15] **THE COURT:** Mr. Bernard, what's your

[16] next question?

[17] **BY MR. BERNARD:**

[18] **Q.** My next question is, is it fair to say that E-3

[19] is intended to show that there's illegal wiring?

[20] **A.** Yes.

[21] **Q.** Anything else?

[22] **A.** Can I see the photograph?

[23] **Q.** Sure.

[24] **A.** No.

[25] **Q.** This photograph is not marked. It says, "New

Page 79

[1] **BY MR. BERNARD:**

[2] **Q.** The last Exhibit -- what's the purpose of this

[3] Exhibit? It says, "Job Site Safety Documents."

[4] **THE COURT:** I'm sorry.

[5] What Exhibit is that?

[6] **MR. BERNARD:** I don't know.

[7] **A.** It's for -- if there's HAZMAT, there's a box.

[8] It's for the fire department.

[9] **THE COURT:** I need to know what Exhibit

[10] you're referring to.

[11] **THE WITNESS:** He's questioning the

[12] yellow box.

[13] **MR. BERNARD:** It's not numbered.

[14] **MR. JEFFERSON:** E-7.

[15] **THE LAW CLERK:** Are some things being

[16] double marked?

[17] **MR. JEFFERSON:** No.

[18] **THE LAW CLERK:** Okay.

[19] ---

[20] (Whereupon, City Exhibit E-7 was marked

[21] for identification.)

[22] ---

[23] **BY MR. BERNARD:**

[24] **Q.** What is wrong with what's depicted in E-7?

[25] **A.** The photo was taken to show the cease poster.

Page 78

[1] batteries, \$45."

[2] What's wrong with that?

[3] **A.** It's showing the -- I think this was another

[4] photograph that was showing the poster right here.

[5] **Q.** Showing what?

[6] **A.** The poster.

[7] **Q.** What poster?

[8] **A.** An Intent to Cease poster. This was posted, I

[9] think, a month ago.

[10] **Q.** Oh, the purpose of the photograph is to show that

[11] there is a Notice of Intent to Cease Operations?

[12] **A.** Right.

[13] **Q.** Well, we know that.

[14] **THE COURT:** And can we get that one

[15] marked so we don't lose track of it?

[16] **MR. JEFFERSON:** E-6.

[17] **THE COURT:** All right.

[18] ---

[19] (Whereupon, City Exhibit E-6 was marked

[20] for identification.)

[21] ---

[22] **THE COURT:** Mr. Bernard, any other

[23] questions?

[24] **MR. BERNARD:** No, not on this Exhibit.

[25]

Page 80

[1] **Q.** The photograph is intended to show that there was

[2] a Notice to Cease Operations.

[3] **A.** Yes.

[4] **MR. BERNARD:** Well, given the fact that

[5] none of this is in dispute except perhaps the

[6] wiring --

[7] **MR. JEFFERSON:** That's why they weren't

[8] marked, Your Honor.

[9] **THE COURT:** I'm sorry?

[10] **MR. JEFFERSON:** Excuse me.

[11] That's why those photographs were not

[12] marked. He's asking about photographs that

[13] weren't marked.

[14] **THE COURT:** All right. That's fine.

[15] **MR. BERNARD:** No further questions.

[16] **THE COURT:** Okay.

[17] **MR. JEFFERSON:** Thank you very much.

[18] **THE COURT:** Were you going to move any

[19] photographs into evidence?

[20] **MR. JEFFERSON:** Yes.

[21] I was going to move all of the

[22] photographs that were subject to questioning.

[23] **THE COURT:** So what photographs are

[24] those?

[25] **MR. JEFFERSON:** E-1, 2, 3, 4, 5, 6, 7.

Page 81

[1] **THE COURT:** Well, E-1 has already been
[2] admitted. So you're seeking to admit City E-2
[3] through 7.
[4] Do I have that right?
[5] **MR. JEFFERSON:** That's correct, Your
[6] Honor.
[7] **THE COURT:** Please be seated.
[8] Mr. Bernard, do you have any objections
[9] to those photographs?
[10] **MR. BERNARD:** Your Honor, I've already
[11] questioned the witness on the photographs.
[12] **THE COURT:** Just yes or no.
[13] Are you objecting?
[14] **MR. BERNARD:** No.
[15] **THE COURT:** Okay. They're admitted
[16] into evidence.
[17] ---
[18] (Whereupon, City Exhibits E-2 through
[19] E-7 were moved into evidence.)
[20] ---
[21] **THE COURT:** Okay. It's 5:36.
[22] Where do you all want to go from here?
[23] I mean, in all seriousness, we did
[24] start late in the day, and I do have to let
[25] staff leave. But I don't want you all to feel

Page 83

[1] I'm going to rule based on what I've heard or
[2] I'm giving you the opportunity to come back
[3] tomorrow morning at 9:00 and argue. So you can
[4] deal with the exhibits while you decide what
[5] your preference is.
[6] ---
[7] (Whereupon, a brief recess was taken.)
[8] ---
[9] **MR. BERNARD:** I believe the Court can
[10] rule.
[11] **THE COURT:** Okay.
[12] Well, that is actually what I'm
[13] inclined to do. But I'm not going to rule
[14] right on the record now. We'll write an order.
[15] But we do need to clear up this exhibit
[16] issue because the exhibits need to be marked
[17] consistent with what they were called when
[18] there was testimony.
[19] So can you all take a minute and see if
[20] you could actually agree on that?
[21] **MR. BERNARD:** Yes, I think we can,
[22] Judge.
[23] **THE COURT:** Okay. Thank you.
[24] ---
[25] (Whereupon, a brief recess was taken.)

Page 82

[1] like you're being given short shrift. So if
[2] you wanted to come back and argue tomorrow
[3] morning, I would accommodate you then.
[4] **MR. BERNARD:** I'm ready to argue very
[5] briefly.
[6] **THE COURT:** No.
[7] Mr. Bernard, either I'm going to rule
[8] with no argument or we're going to argue
[9] tomorrow morning.
[10] **MR. BERNARD:** There's no evidence, Your
[11] Honor. That's my argument.
[12] **THE LAW CLERK:** So these two, 6 and 7,
[13] are actually supposed to be 4 and 5. I have to
[14] make sure the record is consistent.
[15] Can Mr. Bernard please clarify which --
[16] I just need to know which ones he was asking
[17] questions about.
[18] **MR. BERNARD:** Sure.
[19] **THE LAW CLERK:** I'm sorry.
[20] **MR. BERNARD:** I understand.
[21] **THE COURT:** You are all not to leave
[22] until we deal with this exhibit issue.
[23] Put the exhibits down for a moment
[24] because we're going to figure out now what
[25] we're doing. Here are your choices: Either

Page 84

[1] ---
[2] **THE COURT:** Have we agreed on the
[3] exhibits?
[4] **MR. JEFFERSON:** Yes.
[5] **MR. BERNARD:** Yes, Your Honor.
[6] **THE COURT:** Can we put that agreement
[7] on the record?
[8] **MR. JEFFERSON:** Yes.
[9] The testimony that was elicited with
[10] respect to City Exhibit 6 should actually be
[11] City Exhibit 5. And the one that was referred
[12] to as City Exhibit 7 is City Exhibit 4.
[13] **THE COURT:** Okay.
[14] Do you agree with that, Mr. Bernard?
[15] **MR. BERNARD:** I do, yes.
[16] **THE COURT:** Okay.
[17] Then we are in recess. And thank you
[18] all for dealing with the Court's schedule.
[19] **MR. JEFFERSON:** Thank you, Your Honor.
[20] **MR. BERNARD:** Thank you, Your Honor.
[21] **MR. JEFFERSON:** And I -- you know, I'm
[22] sure that the record will reflect that I moved
[23] them into evidence. If I haven't, then I move
[24] them into evidence.
[25] **THE COURT:** Yes.

[1] **MR. JEFFERSON:** Okay.
[2] **THE COURT:** You had already moved in
[3] E-1, City E-1. That was admitted some time
[4] ago. When we got confused was when you started
[5] seeking to admit E-2 through 5 when there were
[6] only 2 through -- I'm sorry. You sought to
[7] admit 2 through 7 when there were only five
[8] photos.
[9] So all five photos, E-1 through 5, have
[10] been admitted into evidence for purposes of
[11] this hearing.
[12] **MR. JEFFERSON:** Thank you, Your Honor.
[13] And I'm sorry for the confusion.
[14] **THE LAW CLERK:** This court stands
[15] adjourned until the call of the crier.
[16] **THE COURT:** Thank you.
[17] ---
[18] (Whereupon, the proceedings were
[19] adjourned.)
[20] ---
[21]
[22]
[23]
[24]
[25]

[1] CERTIFICATION

[2] I hereby certify that the proceedings
[3] and evidence are contained fully and accurately
[4] in the notes taken by me on the trial of the
[5] above case, and that this copy is a correct
[6] transcript of the same.
[7]
[8]
[9]

[10] Julie Davis, RPR
[11] Official Court Reporter
[12]
[13] -----
[14]
[15]

[16] (THE FOREGOING CERTIFICATION OF THIS
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